United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-7350

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

B

P/S

MEAT SYSTEMS CORPORATION,

Plaintiff-Appellee,

—against—

BEN LANGEN-MOL, INC., a New York corporation, HOMBURG, B.V. and KNUD SIMONSEN INDUSTRIES, LTD.,

Defendants,

—and—

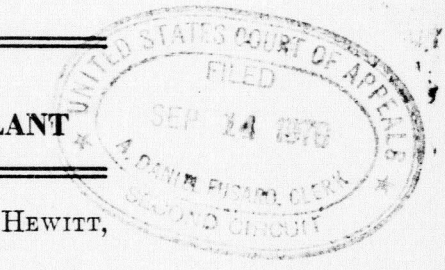
BEN LANGEN-MOL, INC., a Delaware corporation,

Applicant for Intervention-Appellant,

—and—

CARL ADILETTI and STEPHEN ZITIN,

Additional Defendants on Counterclaim-Appellees.



BRIEF OF APPLICANT FOR INTERVENTION-APPELLANT

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Did the District Court err in holding that appellant's motion for leave to intervene and for a preliminary injunction was barred by laches?

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 76-7350

MEAT SYSTEMS CORPORATION,

Plaintiff-Appellee,

-against-

BEN LANGEN-MOL, INC., a New York corporation, HOMBURG, B.V. and KNUD SIMONSEN INDUSTRIES LTD.,

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-and-

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BRIEF OF APPLICANT FOR INTERVENTION-APPELLANT

Applicant for Intervention-Appellant, Ben Langen-Mol, Inc., a Delaware corporation ("Belam-Delaware") submits this brief in support of its appeal from the order of Hon. Whitman Knapp entered on July 27, 1976.

Statement of the Case

On July 23, 1976, Hon. William C. Conner signed an order directing plaintiff-appellee Meat Systems Corporation ("Meat Systems") and additional defendants-appellees Car Adiletti ("Mr. Adiletti") and Stephen Zitin ("Mr. Zitin") to show cause before Hon. Whitman Knapp on July 27, 1976, why an order should not be entered (a) pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, granting Belam-Delaware leave to intervene as a party defendant in the action and serve its answer and counterclaim to the amended complaint, and (b) pursuant to Rule 65 (a) of the Federal Rules of Civil Procedure, granting Belam-Delaware preliminary injunctive relief with respect to its first and second counterclaims restraining Meat Systems, Mr. Adiletti, Mr. Zitin and all persons acting in concert with them from (i) making further use of confidential data and trade secrets belonging to Belam-Delaware and (ii) infringing United States Letters Patent No. 3,934,860, by, among other things, consummating pending transactions with John Morrell & Co. and Garland Food Corporation. (A-4-5).

Statement of Facts

At the hearing on June 27, 1976, Judge Knapp entered an order denying Belam-Delaware's motion on the ground of laches. On July 29, 1976, Belam-Delaware filed its Notice of Appeal from that order (A-148A) and moved, pursuant to

Rule 27(e) of the Rules of this Court, for a preference. That motion was granted by order of Hon. James L. Oakes on August 16, 1976, on the condition that the record be filed by August 13, 1976, and that appellant's brief and appendix be served and filed by August 24, 1976. Each of those conditions have been met by appellant.

At the very beginning of the hearing ordered by Judge Conner, Judge Knapp indicated that he was denying Belam-Delaware's motion "on the grounds of laches without prejudice to renewing it on proper notice this September."* (A-151). We respectfully submit that the District Court's order, based on a finding of laches, was clearly erroneous in view of its recognition that:

> "Only in the last seven days did they [appellees] start to threaten you [appellant]." (A-150).

Therefore, we believe that the District Court abused its discretion by refusing to consider on its merits the motion of Belam-Delaware.

The Affidavit of Ben G. Langen (A-7), submitted in support of the motion below, shows that:

(a) on December 23, 1975 Belam-Delaware succeeded to the business of defendant Ben Langen-Mol, Inc., a New York corporation ("Belam-New York") by assuming

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* If the District Court meant what it wrote, viz. that Belam-Delaware's application for leave to intervene, as well as its application for a preliminary injunction, was barred by laches, we fail to perceive how that infirmity might be removed by the further passage of time.

certain liabilities and purchasing certain assets (A-9), among which was an assignment of the counterclaim against Meat Systems and Messrs. Adiletti and Zitin theretofore asserted in this action by Belam-New York (A-41) (after December 23, 1975 Belam-New York ceased to be an operating company (A-9));

(b) Belam-Delaware is the exclusive licensee under United States Letters Patent No. 3,934,860 (the "'860 Patent"), which was issued on January 27, 1976 and covers an apparatus known as the Belam Meat Yield Improver, a device employed by processors of meat to maximize product yield, which presently is marketed exclusively in the United States by Belam-Delaware (A-10);

(c) the Belam companies, consisting of Belam-Delaware, Belam-New York and Ben Langen-Mol B.V., a Netherlands corporation, have invested many years and considerable sums in the reasearch, development and marketing of the Belam Meat Yield Improver, which device represents a revolutionary development in the field of meat processing (A-9);

(d) Mr. Adiletti was formerly the national sales manager of Belam-New York and in that capacity obtained full and complete knowledge of the trade secrets and confidential information of the Belam companies (A-10-12);

(e) while still an employee of Belam-New York,

Mr. Adiletti conspired with Mr. Zitin during 1975, to form and did form in July of 1975, Meat Systems, a thinly capitalized corporation, as a vehicle to exploit the trade secrets and confidential information of the Belam companies by causing to be manufactured and offering for sale pirated machines which, except for minor cosmetic differences, are exact duplicates of the Belam Meat Yield Improver and clearly infringe the '860 Patent (A-12-16);

(f) the normal use of the Belam Meat Yield Improver is covered by United States Letters Patent No. 3,778,134 (the "'134 Patent") under which Belam-Delaware is presently the exclusive licensee (A-9);

(g) during November, 1975, prior to the issuance of the '860 Patent and immediately after learning of two sales by Meat Systems of its pirated machines, as the then exclusive licensee under the '134 Patent, Belam-New York caused the defendant Homburg, B.V. ("Homburg"), the owner of both the '134 and '860 Patents, to sue the purchasers of the Meat Systems machines for infringement of the '134 Patent and those actions have been and presently are being defended by Meat Systems (A-17);

(h) prior to Belam-Delaware's learning of an order for over 100 of Meat System's infringing machines by John Morrell & Co. of Chicago, Illinois, a major

meat processor (the "Morrell order"), neither Belam-Delaware nor its predecessor Belam-New York had any knowledge of substantial sales of infringing machines by Meat Systems or its principals, Messrs. Adiletti and Zitin (A-12; A-150-57);

(i) the Morrell order is vital to Belam-Delaware and represents an increase of over 50% of the average annual sales of Belam Meat Yield Improvers sold in the United States, since they were first marketed here in the fall of 1974 (A-21);

(j) the loss of the Morrell order and the unlawful activity of Meat Systems and its principals, if permitted to continue, soon will force Belam-Delaware out of business (A-23); and

(k) Meat Systems intentionally has been thinly capitalized and Messrs. Adiletti and Zitin have arranged their affairs so as to render them unable to respond in substantial money damages, should Belam-Delaware prevail at trial (A-23).

Not one of the foregoing statements was controverted by appellees. (A-160).

At the time of the hearing below, Belam-Delaware had a Belam Meat Yield Improver available in the Courthouse for Judge Knapp's inspection and had served a subpoena duces tecum on Meat Systems directing that it also produce its infringing machine for inspection by the Court. Ben G. Langen,

who is a co-inventor of the apparatus covered by the '860 Patent (A-28) and the president of Belam-Delaware (A-7) was present in Court. (A-150) Also present was Sheridan Neimark, Esq., a member of the patent bar and the individual who processed the '860 Patent (A-28). (A-149). Accordingly, Belam-Delaware was fully prepared to go forward with the hearing and to establish (a) that the '860 Patent is unquestionably valid; (b) that it is being infringed by the machines being sold by Meat Systems to Morrell and offered for sale by it to others; and (c) that as a result of the Morrell order and the other conduct of Meat Systems and its principals, Belam-Delaware is suffering irreparable injury.

In view of the District Court's threshold finding of laches (a point not argued below by appellees), it did not consider the merits of the motion of Belam-Delaware. For the reasons discussed below, we believe that the District Court's finding of laches was clearly erroneous and that the District Court's refusal to consider Belam-Delaware's motion on its merits was an abuse of its discretion.

Argument

I. BELAM-DELAWARE IS ENTITLED TO INTERVENE AS OF RIGHT IN THIS ACTION.

Appellees opposed so much of Belam-Delaware's motion as sought leave to intervene below upon the grounds that (a) its application was not timely and (b) its interests

were adequately represented. Appellees also appeared to oppose intervention because Belam-Delaware sought to intervene in the action only insofar as the validity of the '860 and the '134 Patents is involved. (Appellees apparently conceded that Belam-Delaware has an interest in a substantial portion of the subject matter of this action -- viz., the validity of the '860 and '134 Patents, of which it is the exclusive licensee and which, in the Tenth and Fifth Causes of Action, respectively, of the amended complaint Meat Systems seeks to declare invalid.)

It is unclear whether the District Court considered on its mertis so much of Belam-Delaware's motion as sought leave to intervene, in view of (a) the District Court's denial of that portion of the motion without prejudice to renewal on regular notice of motion (A-148C) and (b) its statement that:

> "I am not arguing the application to intervene. It may be timely, but you do not do it on a two-day notice of an order to show cause."
>
> (A-152)

In response to that remark by the District Court, counsel for Belam-Delaware stated:

> "I can apologize for that, your Honor, but it really isn't our fault. We did not seek a temporary restraining order. We did not ask Judge Conner to set this down for hearing on two or three days notice. I think it is unfortunate that it was set down on that basis. However, the harm is in fact threatened and it is important that this matter be heard and that the application for preliminary injunction be considered.
>
> "However, I will agree with your Honor that it

is unfortunate and to some extent unfair that the time period be compressed in this fashion. However, I think your Honor has to appreciate that my client didn't have any basis for moving for a preliminary injunction so far as making a proper showing of irreparable harm is concerned until the last several days as the affidavit indicates.

"I don't see why my client should be prejudiced now when it didn't have the grounds upon which to make the motion back in January."

(A-152-153)

We believe that Belam-Delaware's intervention in this action rather than commencing a separate action against appellees to obtain injunctive relief preventing appellees from infringing the '860 Patent is, on its face, sensible and the procedure most convenient to both the litigants and the District Court. Moreover, whether or not the District Court considered so much of Belam-Delaware's motion as sought intervention, it is clear, as a matter of law, that Belam-Delaware is entitled to intervene in this action as of right, and we respectfully submit that this Court should so hold.

A. The Application Below Was Timely.

Appellees contended below that Belam-Delaware should have moved to intervene now nine months ago, contemporaneously with its purchase of the business of Belam-New York. That time would not have been appropriate, however, at least so far as the '860 Patent is concerned, because that patent was not issued until January 27, 1976. Moreover, as recognized both by the District Court (A-150) and by

counsel for appellees (A-162), Belam-Delaware did not learn of any significant sales by Meat Systems of infringing machines until several days prior to making the application for intervention, which was merely incidental to the real thrust of its motion below, viz. its application for a preliminary injunction.

It was a matter of record below, which was brought to the attention of the District Court, that answers had not yet been served by any party in response to Meat Systems amended complaint dated April 2, 1976. (A-152). Since issue had not been joined below, Belam-Delaware's motion to intervene under Rule 24(a) of the Federal Rules of Civil Procedure was "timely" as a matter of law. Kozak v. Wells, 278 F.2d 104 (8th Cir. 1960); Mullins v. De Soto Secs. Co., 3 F.R.D. 432 (D.C. La. 1944); Brennan v. Connecticut State UAW Community Action Program Council, 60 F.R.D. 626 (D.C. Conn. 1973); Wright & Miller, Federal Practice & Procedure, Civil § 1916.

Furthermore, appellees did not intimate below that Belam-Delaware's intervention would impede in any way the progress of the litigation or otherwise prejudice the rights of the original parties, which, under governing case law, are the most important issues for the Court's consideration. See, e.g., McDonald v. E. J. Lavino Co., 430 F.2d 1065, 1073 (5th Cir. 1970); McCausland v. Shareholders Management Co., 52 F.R.D. 521 (S.D.N.Y. 1971); Monarch

Asphalt Sales Co. v. Wilshire Oil Co. of Texas, 511 F.2d 1073 (10th Cir. 1975).

Appellees cannot seriously contend that Belam-Delaware's intervention, which seeks to enjoin preliminarily further infringement of the '860 Patent (and ultimately the '134 Patent), presents any new issues of law or fact in view of the Fifth and Tenth Causes of Action of Meat Systems' amended complaint, which seek a declaratory judgment that each of those patents is invalid and unenforceable. In substance, appellees and Belam-Delaware are on the opposite sides of issues raised by appellees in the first instance.

B. Belam-Delaware's Interests Are Not Adequately Represented by Homburg and/or Belam-New York.

Appellees contended below that Homburg adequately represents Belam-Delaware's interests with respect to the validity of the '134 and '860 Patents and that Belam-New York adequately represents Belam-Delaware's interests with respect to its first counterclaim.

It should be noted that Homburg, for reasons of its own, has moved not once, but twice, to have this action dismissed as against it upon the ground that the District Court lacks jurisdiction over its person. Homburg's second such motion was, at the time of hearing below, and is, presently sub judice. Therefore, Homburg is precluded from taking any affirmative steps to prosecute infringement claims

in this action. Furthermore, Homburg has neither filed a counterclaim for infringement against Meat Systems or Messrs. Adiletti and Zitin, nor has it sought preliminary injunctive relief with respect thereto in the Court below or in any other Court.

Even if Homburg's jurisdictional motion is adversely decided and it then prosecutes this action vigorously, Belam-Delaware may well have long ago been driven out of business by appellees' infringement of the '860 Patent. Moreover, the defense of the mere validity of the patents alone will not protect Belam-Delaware from the irreparable harm being suffered by it as a result of appellees' daily infringement thereof. We submit that the unreasonableness of appellees' argument is clearly evident. In any event, the interest of a corporation with the exclusive right to sell a patented product in the subject matter of an action brought to declare the patent invalid and, accordingly, the appropriateness of its application for intervention notwithstanding the fact that the patentee was already a party, has long been recognized. Innis, Speiden & Co. v. Food Machinery Corp., 2 F.R.D. 261 (D. Del. 1942).

Not only is Belam-New York (a "shell corporation") not an adequate representative of Belam-Delaware with respect to its first counterclaim, but, moreover, it may no longer be the proper party pursuant to Rule 19 of the Federal Rules of Civil Procedure to assert that claim in view of its as-

signment thereof to Belam-Delaware. Oskierko v. Southwestern Horizons, Inc., 60 F.R.D. 365 (N.D.Ill. 1973); Hallman v. Safeway Stores, Inc., 368 F.2d 400 (5th Cir. 1966); Roder v. Manufacturer's Cas. Ins. Co. of Philadelphia, 242 F.2d 419 (2d Cir. 1957).

Accordingly, having met each of the requirements of Rule 24(a) of the Federal Rules of Civil Procedure, Belam-Delaware's motion for leave to intervene as of right should have been granted by the District Court.

II. BECAUSE IT MOVED BELOW WITHIN DAYS OF LEARNING OF THE MORRELL ORDER, WHICH ENABLED IT FOR THE FIRST TIME TO SHOW IRREPARABLE HARM, BELAM-DELAWARE WAS NOT BARRED BY LACHES FROM SEEKING A PRELIMINARY INJUNCTION.

In view of the District Court's express recognition of the indisputable fact that Belam-Delaware sought a preliminary injunction within several days of learning that Meat Systems "threatened" it (A-150), it is difficult to understand the basis of the Court's finding of laches. The only possible explanation for the ruling below is that the District Court held that a showing of irreparable harm need not be made by a party seeking a preliminary injunction in a patent case. This would explain the District Court's repeated insistence that the motion for a preliminary injunction should have been made in January, 1976, when Belam-Delaware concededly could not make any showing of irreparable harm. We believe the District Court's ruling to be clearly

erroneous as a matter of law. We respectfully submit that a showing of irreparable harm must be made in connection with any application for a preliminary injunction.

Consequently, since the basis for the District Court's refusal to consider on its merits Belam-Delaware's motion was clearly erroneous, it follows that the District Court abused its discretion in refusing to entertain the motion below. Therefore, we believe that this Court should reverse the order below and remand the matter with a direction that Belam-Delaware's application for a preliminary injunction be considered on its merits and in connection therewith that an evidentiary hearing be held.

A. A Showing of Irreparable Harm Is a Sine Qua Non of Any Application for a Preliminary Injunction.

The record below does not contain a clear articulation of the basis for the District Court's finding of laches. However, the following colloquies indicate that the District Court did not find controlling Belam-Delaware's uncontroverted assertion that prior to learning of the Morrell order, it was unable to make any showing of irreparable harm:

> "THE COURT: Why did you bring an order to show cause when you have known for six months at least the situation exists?
>
> "MR. KRISTOL: Your Honor, that isn't accurate at all.
>
> "As the affidavit of Mr. Langen who is with me today indicates, only within the last several days --

"THE COURT: Six months you have known you have had these rights. Only in the last seven days did they start to threaten you. But you have known the situation existed at least since you got the patent.

"MR. KRISTOL: The patent was issued in January, not in December.

"My client, Ben Langen-Mol, Delaware, acquired the business of Ben Langen New York in 1975.

"In December 1975 [sic], the 860 patent issued. At that time Homburg, B.V., the defendant --

"THE COURT: Why didn't you move then?

"MR. KRISTOL: We didn't know about these substantial orders until the last couple of days.

"THE COURT: You knew the danger was there. Why didn't you move? Why did you come in with an order to show cause on five minutes notice?

"MR. KRISTOL: Your Honor, I think it is a calculation of expenses versus benefits.

"THE COURT: Well, you made your first mistake. I am denying your motion on the grounds of laches without prejudice to renewing it on proper notice this September.

"You made a miscalculation. You cannot come in with an order to show cause, whip up everybody up here in five minutes when you have known the situation since January.

(A-150-51)

* * *

"THE COURT: What is the difference between December '75 and now?

"MR. KRISTOL: The difference is we are talking about essentially the order involving the Morrell Company, an order that my company has been working on for over two years, has spent countless thousands of dollars developing which it believed it had secured and which if it had obtained would represent a fifty percent increase in sales.

"THE COURT: That is a question of size, but you

could have brought this motion in November of '75.

"MR. KRISTOL: Your Honor, when we found out that Meat Systems had sold a machine we could have moved for a preliminary injunction then?

"THE COURT: That is right.

"MR. KRISTOL: We did not believe at that time that we could make the showing of irreparable harm. We are talking about minor sales, your Honor. We are talking about minor sales. Also we were talking --

"THE COURT: But if they are selling, if you have a right to an injunction for patent infringement which is another question; you can enjoin one. They could have done it then.

"MR. KRISTOL: How much expense would a party rationally incur to try to establish an abstract legal right.

"THE COURT: It is not abstract legal right. You know they are competing with you. You know the only thing that is holding them back is their success and the quicker you establish it, you have got the right to do it.

"MR. KRISTOL: We have the right to present a motion. Of course, any party has that right at any time.

"THE COURT: But you had exactly as much right then as you have now.

"MR. KRISTOL: No, your Honor, the circumstances are different. There is certainly a difference between my right to protect my property and my right to get a preliminary injunction based on someone's threatening to destroy that property. That is the situation we have got today.

"For the first time, we have, I think, a clear showing of irreparable harm arising from the infringement.

"THE COURT: What is the difference between then and now? Just quantity?

"MR. KRISTOL: The question of irreparable harm, the ability to get injunctive relief. That is what this motion is all about."

(A-155-57)

As this Court recently held in Treibwasser & Katz v. American Telephone & Telegraph, et ano., ____ F.2d ____, slip. op. 3753 (2d Cir. 1976), we respectfully submit that:

> "...the basic obligation of the plaintiff [seeking a preliminary injunction is] to make a clear showing of the threat of irreparable harm. That is a fundamental and traditional requirement of all preliminary injunctive relief..." id., at slip. op. 3757. (matter in brackets added)

Accord: Doran v. Salem, Inc., 422 U.S. 922, 931 (1974); SCM Corp. v. Xerox Corp., 507 F.2d 358, 360 (2d. Cir. 1974).

Although our research has not disclosed a patent case on point, if the rule were otherwise with respect to patent litigation, the federal courts would be flooded with applications for preliminary injunctions in cases where plaintiffs believed their patents to be unquestionably valid, infringed and, as a result of possible future sales of infringing devices they might be damaged in such a fashion as possibly to render them without an adequate remedy at law. Such attenuated speculation is irreconcilable with the well established principle that a preliminary injunction is an extraordinary remedy, which should not be granted except upon, among other things, a clear showing of possible irreparable injury. Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319, 323 (2d Cir.), cert. denied 349 U.S. 999 (1969); Sanders v. Airline Pilots Ass'n Int'l, 473 F.2d 244, 248 (2d Cir. 1972).

Although not clearly apposite to the preliminary injunction issue, we believe it instructive, by way of ana-

logy, that in cases where laches is asserted upon the trial of an action for patent infringement:

> "...there is authority for the proposition that a patentee need not bring an infringement action until the extent of possible infringement makes litigation 'monetarily ripe.'" Autoclave Engineers, Inc. v. The Duriron Company, Inc., ____ F. Supp. ____, 190 USPQ 125, 132 [E.A. Pa. 1976]

Accord: Tripp v. United States, 406 F.2d 1066, 1071 (Ct. Cl. 1969); Keiser v. J. Wiss & Sons Co., 340 F. Supp. 41, 54 (D.N.J. 1972).

Therefore, we respectfully submit that the District Court's refusal to entertain on its merits the application for a preliminary injunction of Belam-Delaware constituted an abuse of its discretion. Belam-Delaware made a strong showing below, not considered by the Court, that (a) the '860 Patent is valid beyond question; (b) it is being infringed by Meat Systems and its principals; and (c) as a result of that infringement Belam-Delaware is suffering irreparable harm. Upon considering the merits, should the District Court so find, it is then evident that Belam-Delaware would be entitled to the injunctive relief it sought below. Carter-Wallace, Inc. v. Otte, 474 F.2d 529 (2d Cir. 1972); Carter-Wallace, Inc. v. Davis-Edwards Pharmacal Corp., 443 F.2d 867 (2d Cir. 1971).

B. Upon Remand an Evidentiary Hearing Should Be Held.

In opposition to Belam-Delaware's application for a preliminary injunction and in an obvious attempt to ob-

fuscate the material issues by burying the District Court in paper, appellees obliquely referred to more than 35 prior patents that they contended anticipate the invention of the '860 Patent. Among the patents purportedly constituting prior art were included Patent No. 2,299,924, which covers a spark plug used in an internal combustion engine; Patent No. 2,598,599, which covers a device to properly align the front wheels of an automobile; Patent No. 1,779,346 which relates to a metal joining strip; and Patent No. 2,508,864 which relates to an optical device.

Although such assertions may be made with reasonable safety in affidavits, we suggest that the District Court would make short work of such frivolous contentions from the bench.

Moreover, more importantly, we believe that the issues of (a) the validity beyond question of the '860 Patent and (b) the infringement thereof by the Meat Systems' machines are subjects:

> "...where...a judge...could derive enlightenment from hearing the testimony of scientists, listening to their cross-examination, and even questioning them himself, rather than only the argument of lawyers based on their affidavits." Carter-Wallace, Inc. v. Davis-Edwards Pharmacal Corp., supra., 880.

Belam-Delaware has raised serious and substantial questions, which are entitled to thorough consideration by the District Court.

Conclusion

For the foregoing reasons, this Court should enter an order (a) reversing the order of the District Court, (b) ruling that Belam-Delaware is entitled to intervene in this action as of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, (c) remanding this action to the District Court for its expedited consideration of Belam-Delaware's application for a preliminary injunction and (d) directing that in connection therewith an evidentiary hearing be held.

Dated: New York, New York
August 24, 1976

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MEAT SYSTEMS CORPORATION,	:	
Plaintiff-Appellee,	:	
-against-	:	
BEN LANGEN-MOL, INC., a New York corporation, HOMBURG B.V. and KNUD SIMONSEN INDUSTRIES LTD.,	:	Index No. 76-6350
Defendants,	:	AFFIDAVIT OF SERVICE
-and-	:	
BEN LANGEN-MOL, INC., a Delaware corporation,	:	
Applicant for Intervention-Appellant,	:	
-and-	:	
CARL ADILETTI and STEPHEN ZITIN,	:	
Additional Defendants on Counterclaim-Appellees.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

OLGA M. LOPEZ, being duly sworn, deposes and says:

1. I am not a party to this action, I am over 18 years of age and reside at 1561 Metropolitan Avenue, Bronx, New York 10462. On the 24th day of August 1976, I served two copies of the Brief of Applicant for Intervention -

Appellant and Joint Appendix each upon Bell, Wolkowitz, Beckman & Klee, attorneys for plaintiff-appellee and additional defendants on counterclaim-appellees, and Brooks Haidt Haffner & Delahunty, attorneys for defendant Knud Simonsen Industries Ltd., by personally delivering them to their respective offices at 501 Madison Avenue, New York, New York 10022 and 99 Park Avenue, New York, New York 10016.

2. I served the said documents upon Browdy and Neimark, attorneys for defendant Homburg B.V., by delivering two copies thereof personally to Sheridan Neimark, Esq., a member of that firm at our offices located at 75 Rockefeller Plaza, New York, New York 10019.

Olga M. Lopez

Sworn to before me this
25th day of August 1976.

Notary Public

NICOLIE CHRISTIN
Notary Public, State of New York
No. 31-4518347
Qualified in New York County
Commission Expires March 30, 7